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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No. 8:18-cv-02295-JVS-ADS

FIRST AMENDED COMPLAINT

TIFFANY COLEMAN,

Plaintiff,

v.

AMERICAN HONDA FINANCE
CORPORATION,

Defendant.

**1. VIOLATION OF THE TELEPHONE
CONSUMER PROTECTION ACT, 47
U.S.C. § 227 *ET SEQ.***

**2. VIOLATION OF THE ROSENTHAL
FAIR DEBT COLLECTION PRACTICES
ACT, CAL. CIV. CODE § 1788 *ET SEQ.***

JURY TRIAL DEMANDED

NOW COMES, TIFFANY COLEMAN, through counsel, WAJDA LAW GROUP, APC,
submitting her first amended complaint against Defendant, AMERICAN HONDA FINANCE
CORPORATION, alleging as follows:

NATURE OF THE ACTION

1. This action arises under the Telephone Consumer Protection Act (“TCPA”), 47
U.S.C. § 227 *et seq.* and the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), Cal. Civ.
Code § 1788 *et seq.*

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

3. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

17. Every month thereafter, Plaintiff became victim to Defendant' relentless collection call campaign as they attempted to collect Plaintiff's monthly payment.

18. Each time Plaintiff answered, Plaintiff was greeted by clear pause prior to being connected to Defendant' representative.

19. In November of 2017, Plaintiff informed Defendant that payments will be routinely late, will be made, before demanding that Defendant stop calling.

20. Subsequent to Plaintiff's November of 2017 request, Defendant proceeded to call Plaintiff 2 to 3 times daily every month until payment was received.

21. In July of 2018, having had enough, Plaintiff mailed written correspondence to Defendant demanding, *inter alia*, that they stop calling.

DAMAGES

22. As stated herein, Defendant's phone calls have severely disrupted Plaintiff's everyday life and overall well-being.

23. Defendant's telephone harassment campaign have caused Plaintiff actual harm, including but not limited to: aggravation that accompanies unsolicited telephone calls, anxiety, diminished value and utility of telephone equipment and telephone subscription services, emotional distress, increased risk of personal injury resulting from the distraction caused by the phone calls intrusion upon and occupation of Plaintiff's cellular telephone capacity, invasion of privacy, loss of battery charge, loss of concentration, mental anguish, nuisance, the per-kilowatt electricity costs required to recharge her cellular telephone as a result of increased usage of her telephone services, and wasting Plaintiff's time.

CLAIMS FOR RELIEF

COUNT I:

Telephone Consumer Protection Act (47 U.S.C. § 227 *et seq.*)

24. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

25. Defendant placed or caused to be placed hundreds of non-emergency calls, including but not limited to the aforementioned collection calls, to Plaintiff's cellular telephone utilizing an automatic telephone dialing system ("ATDS") or an artificial or prerecorded voice without Plaintiff's consent in violation of 47 U.S.C. §227 (b)(1)(A)(iii).

26. Upon information and belief, based on the lack of prompt human response, Defendant employed an ATDS to place calls to Plaintiff's cellular telephone.

27. Upon information and belief, the ATDS employed by Defendant transfers the call to a live representative once a human voice is detected, hence the clear pause.

28. Upon information and belief, the ATDS employed by Defendant has the *capacity* – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.

29. Upon information and belief, Defendant acted through its agents, employees, and/or representatives at all times relevant.

30. As a result of Defendant violations of 47 U.S.C. §227 (b)(1)(A)(iii). Plaintiff is entitled to receive \$500.00 in damages for each violation.

31. As a result of Defendant's *knowing and willful violations* of 47 U.S.C. §227 (b)(1)(A)(iii), Plaintiff is entitled to receive up to \$1,500.00 in treble damages for each violation.

WHEREFORE, Plaintiff requests the following relief:

A. find that Defendant violated 47 U.S.C. § 227 *et seq.*;

- B. enjoin Defendant from placing calls to Plaintiff pursuant to 47 U.S.C. § 227(3)(A).
- C. award statutory damages of \$500.00 for each such violation pursuant to 47 U.S.C. § 227(3)(B);
- D. award treble damages up to \$1,500.00, for each such violation pursuant to 47 U.S.C. § 227(3)(C); and
- E. award such other relief as this Court deems just and proper.

**COUNT II:
Rosenthal Fair Debt Collection Practices Act (Cal. Civ. Code § 1788 *et seq.*)**

32. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

Violation(s) of Cal. Civ. Code § 1788.11

33. California Civil Code § 1788.11 provides:

No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

- (d) Causing a telephone to ring repeatedly or continuously to annoy the person called; or
- (e) Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable and to constitute an harassment to the debt under the circumstances.

Cal. Civ. Code §§ 1788.11(d) and (e).

34. Defendant violated Cal. Civ. Code §§ 1788.11(d) and (e) by calling Plaintiff's cellular telephone on hundreds of occasions with such frequency as to be unreasonable as well as constitute harassment despite Plaintiff's demand(s) that they stop.

35. Plaintiff may enforce the provisions of Cal. Civ. Code § 1788.11 pursuant to Cal. Civ. Code § 1788.30 which provides:

- (a) Any debt collector who violates this title with respect to any debtor shall be liable to that debtor only in an individual action, and his liability therein to

1 that debtor shall be in an amount equal to the sum of any actual damages
 2 sustained by the debtor as a result of the violation;

3 (b) Any debt collector who willfully and knowingly violates this title with
 4 respect to any debtor shall, in addition to actual damages sustained by the
 5 debtor as a result of the violation, also be liable to the debtor only in an
 6 individual action, and his additional liability therein to that debtor shall be
 7 for a penalty in such amount as the court may allow, which shall not be less
 8 than one hundred dollars (\$100.00) nor greater than one thousand dollars
 9 (\$1,000.00).

10 (c) In the case of any action to enforce any liability under this title, the prevailing
 11 party shall be entitled to costs of the action. Reasonable attorney's fees,
 12 which shall be based on time necessarily expended to enforce the liability,
 13 shall be awarded to a prevailing debtor.

14 WHEREFORE, Plaintiff requests the following relief:

- 15 A. a finding that Defendant violated Cal. Civ. Code § 1788.11;
- 16 B. an award of any actual damages sustained by Plaintiff as a result of Defendant's
 17 violation(s);
- 18 C. an award of such additional damages, as the Court may allow, but not exceeding
 19 \$1,000.00;
- 20 D. an award of costs of this action, together with a reasonable attorney's fee as
 21 determined by this Court; and
- 22 E. an award of such other relief as this Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues in
 25 this action so triable of right.

26 Date: September 11, 2019

Respectfully submitted,

TIFFANY COLEMAN

By: /s/ Joseph S. Davidson

Joseph S. Davidson

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